

REMARKS

On entry of this Response, claims 1, 8, 27 and 28 are amended to recite that “the first bore hole is formed by a pair of opening holes extending along the first longitudinal axis and having centers which are offset along a central axis so that the first bore hole has a substantially oval cross-sectional configuration, one of the opening holes being sized to provide an interference fit between the housing component and the first spinal rod when the first spinal rod is inserted in the one of the opening holes.” Support for the amendment can be found, for example, on page 5, lines 14-25. No new matter is added.

Claim 14 is amended to recite that “the first housing component includes a coupling rod extending into the second housing component and the second housing component includes a coupling hole receiving the coupling rod, the coupling hole extending transverse to the second bore hole,” and that “the coupling rod includes a groove formed on a surface of the coupling rod to seat the second spinal rod.” Support for the amendment can be found, for example, in Figure 4B and the corresponding description in the specification. No new matter is added.

Claims 12, 13, 19 and 21-26 were withdrawn in response to the Examiner’s restriction requirement. Claims 1-11, 14-18, 20, 27 and 28 are pending in the instant application, of which claims 1, 8, 14, 27 and 28 are independent. Applicants respectfully submit that the pending claims define over the prior art of record.

I. Claim Rejection under 35 U.S.C. §102(b)

Claims 1-3, 5, 7-11, 14-18, 20, 27 and 28 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Publication No. 2002/0143327 (hereafter “Schluzas”). Applicants respectfully traverse the rejection in view of the amended claims.

A. Claim 1

Applicants respectfully submit that Schluzas fails to disclose at least the following feature of amended claim 1: “the first bore hole is formed by a pair of opening holes extending

along the first longitudinal axis and having centers which are offset along a central axis so that the first bore hole has a substantially oval cross-sectional configuration, one of the opening holes being sized to provide an interference fit between the housing component and the first spinal rod when the first spinal rod is inserted in the one of the opening holes.”

Schluzas describes a transverse connector (12) connecting the spinal rods (14, 16) to each other. See Schluzas, abstract. In Schluzas, the spinal rods (14, 16) support the same vertical region of a spine. See Schluzas, Figure 1.

In comparison, amended claim 1 requires that the first bore hole be formed by a pair of opening holes extending along the first longitudinal axis and having centers which are offset along a central axis so that the first bore hole has a substantially oval cross-sectional configuration. One of the opening holes is sized to provide an interference fit between the housing component and the first spinal rod when the first spinal rod is inserted in the one of the opening holes.

Schluzas does not disclose above feature of amended claim 1. In Schluzas, the rod receiving channels (42, 80) do not include opening holes having centers which are offset along a central axis. Schluzas does not disclose that one of opening holes is sized to provide an interference fit between the housing and the first spinal rod, as recited in amended claim 1. There is no structure in Schluzas that provides an interference fit between the housing and the spinal rod.

For at least the reasons set forth above, Applicants respectfully submit that Schluzas does not disclose each and every feature of amended claim 1. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 1 under 35 U.S.C. §102(b).

B. Claims 2, 3, 5 and 7

Claims 2, 3, 5 and 7 depend from amended claim 1 and, as such, incorporate all of the features of amended claim 1. For at least the reasons set forth above with respect to claim 1, Applicants respectfully submit that Schluzas does not disclose each and every feature of claims 2,

3, 5 and 7. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 2, 3, 5 and 7 under 35 U.S.C. §102(b).

C. Claim 8

As discussed above, Schluzas fails to disclose at least the following feature of amended claim 8: “the first bore hole is formed by a pair of opening holes extending along the first longitudinal axis and having centers which are offset along a central axis so that the first bore hole has a substantially oval cross-sectional configuration, one of the opening holes being sized to provide an interference fit between the housing component and the first spinal rod when the first spinal rod is inserted in the one of the opening holes.” Therefore, Applicants respectfully submit that Schluzas does not disclose each and every feature of amended claim 8. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 8 under 35 U.S.C. §102(b).

D. Claims 9-11

Claims 9-11 depend from amended claim 8 and, as such, incorporate all of the features of amended claim 8. For at least the reasons set forth above with respect to claim 8, Applicants respectfully submit that Schluzas does not disclose each and every feature of claims 9-11. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 9-11 under 35 U.S.C. §102(b).

E. Claim 14

Applicants respectfully submit that Schluzas fails to disclose at least the following features of amended claim 14: “the first housing component includes a coupling rod extending into the second housing component and the second housing component includes a coupling hole receiving the coupling rod, the coupling hole extending transverse to the second bore hole,” and that “the coupling rod includes a groove formed on a surface of the coupling rod to seat the second spinal rod.”

Schluzas describes a connecting rod (28) and an opening (65) receiving the connecting rod. See Schluzas, Figure 2.

In comparison, claim 14 requires that the first housing component include a coupling rod extending into the second housing component and the second housing component include a coupling hole receiving the coupling rod. Claim 14 also requires that the coupling rod include a groove formed on a surface of the coupling rod to seat the second spinal rod.

Schluzas does not disclose above feature of amended claim 14. In Schluzas, the connecting rod (28) does not include a groove formed on a surface of the coupling rod to seat the second spinal rod, as recited in amended claim 14. There is no disclosure in Schluzas of a groove formed on a surface of the coupling rod to seat the second spinal rod.

For at least the reasons set forth above, Applicants respectfully submit that Schluzas does not disclose each and every feature of amended claim 14. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 14 under 35 U.S.C. §102(b).

F. Claims 15-18 and 20

Claims 15-18 and 20 depend from amended claim 14 and, as such, incorporate all of the features of amended claim 14. For at least the reasons set forth above with respect to claim 14, Schluzas does not disclose each and every feature of claims 15-18 and 20. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 15-18 and 20 under 35 U.S.C. §102(b).

G. Claim 27

As discussed above, Schluzas fails to disclose at least the following feature of amended claim 27: “the first bore hole is formed by a pair of opening holes extending along the first longitudinal axis and having centers which are offset along a central axis so that the first bore hole has a substantially oval cross-sectional configuration, one of the opening holes being sized to provide an interference fit between the housing component and the first spinal rod when the

first spinal rod is inserted in the one of the opening holes.” Therefore, Applicants respectfully submit that Schluzas does not disclose each and every feature of amended claim 27.

Accordingly, Applicants respectfully request withdrawal of the rejection of claim 27 under 35 U.S.C. §102(b).

H. Claim 28

As discussed above, Schluzas fails to disclose at least the following feature of amended claim 28: “the first bore hole is formed by a pair of opening holes extending along the first longitudinal axis and having centers which are offset along a central axis so that the first bore hole has a substantially oval cross-sectional configuration, one of the opening holes being sized to provide an interference fit between the housing component and the first spinal rod when the first spinal rod is inserted in the one of the opening holes.” Therefore, Applicants respectfully submit that Schluzas does not disclose each and every feature of amended claim 28.

Accordingly, Applicants respectfully request withdrawal of the rejection of claim 28 under 35 U.S.C. §102(b).

II. Claim Rejection under 35 U.S.C. §103(a)

Claims 4 and 6 are rejected under 35 U.S.C. §103(a) as being unpatentable over Schluzas in view of US 5,053,034 to Olerud *et al.* (hereafter “Olerud”). Applicants respectfully traverse the rejection.

Claims 4 and 6 depend from amended claim 1 and, as such, incorporate all of the features of amended claim 1.

Applicants respectfully submit that Schluzas and Olerud, alone or in any combination, fail to teach or suggest that “the first bore hole is formed by a pair of opening holes extending along the first longitudinal axis and having centers which are offset along a central axis so that the first bore hole has a substantially oval cross-sectional configuration, one of the opening holes being sized to provide an interference fit between the housing component and the first spinal rod when the first spinal rod is inserted in the one of the opening holes,” as recited in claims 4 and 6.

Schluzas does not teach or suggest the above feature.

Olerud is cited to provide teachings for the teeth recited in claims 4 and 6. Olerud discusses a spinal joint for use in spinal surgery includes two blocks pivotally connected to each other. See Olerud, abstract. Olerud, however, does not teach or suggest that “the first bore hole is formed by a pair of opening holes extending along the first longitudinal axis and having centers which are offset along a central axis so that the first bore hole has a substantially oval cross-sectional configuration, one of the opening holes being sized to provide an interference fit between the housing component and the first spinal rod when the first spinal rod is inserted in the one of the opening holes,” as recited in claims 4 and 6. Although Olerud is combined with Schluzas, the combination does not teach or suggest the claimed feature. Both references are silent about an interference fit between the housing and the first spinal rod.

For at least the reasons set forth above, Applicants respectfully submit that Schluzas and Olerud, alone or in any combination, fail to teach or suggest all of the features of claims 4 and 6. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 4 and 6 under 35 U.S.C. §103(a).

III. Conclusion

In light of the above arguments, Applicants respectfully submit that all of the pending claims are in condition for allowance. Should the Examiner feel that a teleconference would expedite the prosecution of this application, the Examiner is urged to contact the Applicants' attorney at (617) 227-7400.

Please charge any shortage or credit any overpayment of fees to our Deposit Account No. 12-0080, under Order No. DUQ-002RCE3. In the event that a petition for an extension of time is required to be submitted herewith, and the requisite petition does not accompany this response, the undersigned hereby petitions under 37 C.F.R. § 1.136(a) for an extension of time for as many months as are required to render this submission timely. Any fee due is authorized to be charged to the aforementioned Deposit Account.

Dated: May 4, 2010

Respectfully submitted,

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